

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

July 15, 2005

IN RE:)	
)	
PETITION OF LYNWOOD UTILITY CORPORATION)	DOCKET NO.
FOR APPROVAL OF TRANSFER AND CONTROL)	04-00360
NUNC PRO TUNC)	

ORDER APPROVING TRANSFER OF AUTHORITY

This matter came before Chairman Pat Miller, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on June 13, 2005 for consideration of the *Petition for Approval of Transfer and Control Nunc Pro Tunc* ("Petition") filed by Lynwood Utility Corporation on October 19, 2004 for approval, pursuant to Tenn. Code Ann. § 65-4-113 (2004), of a transfer of authority to provide utility services.

Background and Petition

On June 14, 1976, Lynwood Utility Company ("Lynwood") received a Certificate of Convenience and Necessity ("CCN") to provide sewer service in Williamson County.¹ In 1996, Mr. David Terry bought Lynwood and changed the organization from Lynwood Utility Company to Lynwood Utility Corporation.² In 1999, Lynwood sought and obtained Authority approval for a rate increase and financing transactions associated with Lynwood's changes and

¹ Due to the significant number of years that have passed since this authorization, neither Lynwood nor the TRA have been able to locate a copy of the certification document. Later orders and docket filings reflect and confirm the authorization.

² See *In re Petition of Lynwood Utility Corporation to Change and Increase Rates and Charges*, Docket No. 99-00507, *Order Approving Rate Increase*, p. 1 (May 10, 2000).

improvements.³ In the course of those proceedings, the Authority learned that Lynwood had completed a transfer of ownership and control on May 12, 1999 without Authority approval.

Lynwood developed certain financial and operational difficulties under Mr. Terry's ownership and control.⁴ On May 12, 1999, Mr. Terry sold Lynwood to Southern Utility Corporation ("Southern").⁵ Southern had been created and was owned by Smith Crowe Wilson, LLC ("SWC"), a local real estate company involved in the development of a new 187-lot subdivision that would receive sewer service from Lynwood.⁶ Southern, through SWC, therefore had a vested interest in the financial viability of Lynwood.⁷

The Authority directed Lynwood to make appropriate filings with the Authority regarding the transfer of control and ownership from Mr. Terry to Southern. On August 4, 2000, Lynwood filed its *Petition for Approval of Transfer and Control Nunc Pro Tunc* regarding the transfer of Lynwood from Mr. Terry to Southern.⁸ The Authority granted the transfer *nunc pro tunc* as set forth in the order dated January 24, 2001.⁹

On May 1, 2002, Southern's shareholders transferred 50% of Southern's outstanding stock to John and Tyler Ring. On January 1, 2003, the shareholders transferred the remaining 50% of Southern's stock to the Rings, making the Rings the sole shareholders of Southern, which is the sole shareholder of Lynwood. The parties did not seek or obtain proper Authority approval for these transfers.

³ See *Id.*, pp 1-2 (May 10, 2000)

⁴ *Id.* at 2

⁵ *Id.*

⁶ *Id.*

⁷ See *In re Petition of Lynwood Utility Corporation for Approval of Transfer and Control*, Docket No 00-00690, *Order Approving Transfer of Authority Nunc Pro Tunc*, p 2 (January 24, 2001)

⁸ *Id.*, *Petition of Lynwood Utility Corporation for Approval of Transfer and Control*, (August 4, 2000)

⁹ *Id.*, *Order Approving Transfer of Authority Nunc Pro Tunc*, p 2 (January 24, 2001)

On October 19, 2004, Lynwood filed its *Petition for Approval of Transfer and Control Nunc Pro Tunc* (“*Petition*”) in the current docket, TRA Docket No. 04-00360.¹⁰ In it, Lynwood sought approval for the transfer of Lynwood’s ultimate authority and control to John and Tyler Ring acting by and through Southern. Lynwood acknowledged that the transfers were completed and therefore would be approved *nunc pro tunc*.

According to the *Petition*, the change in ownership and control at Southern did not affect Lynwood’s utility services; Lynwood continued to operate using the same name, tariff, and CCN after the transfer. Lynwood also continued using the same personnel for billing and accounting services, and the Rings worked with a former Southern shareholder to ensure continuity of business practices. Lynwood therefore asserted that the transfer was virtually transparent to its customers.

Lynwood also represented that the transfer was in the public interest. The new owners invested approximately \$980,000 to upgrade and improve the sewer treatment plant. The work was necessary to bring the plant into compliance with the National Pollutant Discharge Eliminations System permit program.¹¹ Lynwood assumed debt obligations in association with these upgrades, including a line of credit with Tennessee Contractors, Inc. in an amount not to exceed \$1,250,000 (“Line of Credit”).¹² Lynwood’s debt obligations were payable in twelve months or less.¹³ Lynwood affirmed that it would seek Authority approval before entering any long-term debt transactions.¹⁴

¹⁰ *Petition for Approval of Transfer and Control Nunc Pro Tunc* (October 19, 2004)

¹¹ In 2004, the Tennessee Department of Environment and Conservation sued Lynwood for its failure to meet the environmental pollution regulations as set forth in the National Pollutant Discharge Elimination System permit program. A settlement was reached in the Chancery Court for the State of Tennessee, Twentieth Judicial District in Davidson County on June 21, 2004. See *Data Response of Lynwood Utility*, attachment titled *Consent Order and Dismissal* (November 23, 2004)

¹² See *Petitioner’s Response to Data Request No. 2*, p. 3 (February 16, 2005)

¹³ See, e.g., *Petitioner’s Response to Staff’s April 19, 2005 Letter Request* (April 26, 2005).

¹⁴ *Id.*

June 13, 2005 Authority Conference

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

Tenn. Code Ann. § 65-4-109 (2004) applies to utility debt obligations payable in more than one (1) year:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the [A]uthority for such proposed issue. It shall be the duty of the [A]uthority after hearing to approve any such proposed issue maturing more than one (1) year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the authority.

At the June 13, 2005 Authority Conference, the voting panel found that the proposed transfer of authority and control of Lynwood Utility Corporation to Tyler and John Ring as sole shareholders of Southern Utility Corporation, the sole shareholder of Lynwood, was consistent with Tenn. Code Ann. § 65-4-113 (2004). Based on this finding, the panel voted unanimously to approve the *Petition*. The panel also instructed Lynwood to seek Authority approval of any long-term financing and any renewal of its Line of Credit.

IT IS THEREFORE ORDERED THAT:

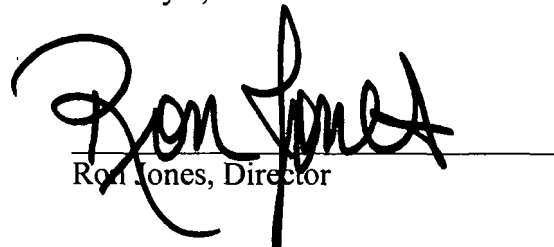
1. The *Petition* is approved.
2. Lynwood must seek Authority approval before entering any long-term financing and before extending beyond June 30, 2005 its Line of Credit with Tennessee Contractors, Inc.



Pat Miller, Chairman



Sara Kyle, Director



Ron Jones, Director